

COMMENT

Ohio's Park Systems: An Appraisal

I. INTRODUCTION

There is little dispute concerning Ohio's need for parks and recreation facilities. Social and economic trends which have produced increased demands for outdoor recreation can be expected to continue. Ohio's population increased from 10,247,000 in 1965 to 10,919,000 in 1970 (6.5 percent). It is expected to increase to 11,453,300 by 1975 (11.7 percent).¹ While this rate of growth approximates the national average, our urban areas are growing even more rapidly. The rate of growth for Franklin County was 13.8 percent for 1965-1970 and is projected to be 27.5 percent for 1965-1975.² Increased population increases the demand for all public services but urbanization produces a special demand for parks. Ohio has become a state occupied by city dwellers who need and seek periodic relief from the tensions of urban life and the routines of earning a living. The increased demand for park and recreational facilities is the result of increased per capita income, shorter work weeks, increased leisure and the greater personal mobility provided by automobile ownership. This comment will examine the various park systems in Ohio with special emphasis upon past practices and their relationship to present problems and future programs. The comment is divided into three main areas: the state park system, natural areas and scenic rivers, and urban parks.

II. STATE PARKS

A. *History*

State parks in Ohio began with the dedication of the canal lands and feeder reservoirs of the Miami-Erie Canal and the Ohio Canal System for public park and recreation use by the General Assemblies of 1894-1898. The canals were still in operation, but the five feeder lakes—Indian, Loramie, Grand Lake St. Marys, Buckeye and Portage—had been used by the public for boating, fishing and picnicking for some time. When the canals were abandoned in 1913 the administration of their lands and waters passed to the Department of Public Works. These lands and waters were leased to the Division of Conservation and Natural Resources in 1929 to be developed as recreation areas. With the receipts from the sale of hunting and fishing licenses, the Division con-

¹ FRANKLIN COUNTY REGIONAL PLANNING COMMISSION, 1985 INTERIM OPEN SPACE PLAN FOR COLUMBUS AND FRANKLIN COUNTY 31 (1969).

² *Id.*

structed additional water impounding dams throughout the state. The General Assembly later appropriated money from the general revenue funds expressly for the purpose of constructing more dams and creating more lakes for public recreation. Because funds were not available to provide camping and picnicking facilities these lakes were used predominately by fishermen.

The Division of Forestry began to develop park-like facilities in the state owned forests during the Depression. The federal government provided the funds and the labor through the Civilian Conservation Corps. In addition to dams, the Division constructed vacation cabins, picnic areas, trails and toilet facilities. During this same period the Ohio Historical Society began to reconstruct and preserve historical sites and natural areas and the Department of Highways began to develop small roadside picnic areas. What is apparent from this brief history of Ohio's state parks is that the goal of making recreation facilities available to all of Ohio's citizens, which is so much a part of park policy today, has always been an important force behind park development.

B. *Administrative Structure*

Recreation oriented agencies were in competition with other agencies for funds. This competition and the lack of funds prevented any agency from developing an active, statewide program for development of facilities. In order to eliminate duplication of effort and overlapping of functions, the Department of Natural Resources was established in 1949. All state agencies engaged in the conservation and use of the state's natural resources were made divisions thereof.³ The Department of Natural Resources was originally composed of seven divisions: Forestry, Geological Survey, Wildlife, Lands and Soils, Shore Erosion, and Water and Parks. There are now ten divisions and sections of the Department, including the more appropriately named Division of Parks and Recreation.

The Department is administered by the Director of Natural Resources who is appointed by the Governor.⁴ The Director has the authority to "formulate and institute all the policies and programs of the department of natural resources" and is expected to so correlate the divisions as to prevent the unnecessary duplications that existed prior to 1949.⁵ The chief of each division is appointed by the Director,⁶ and may in turn appoint as many assistants as necessary.⁷ The rest of the employees of

³ Amended Sub. H.B. 382 was approved by the Governor on July 28, 1949.

⁴ OHIO REV. CODE ANN. § 121.03 (A) (15) (Page 1969).

⁵ OHIO REV. CODE ANN. § 1501.01 (Page 1964).

⁶ OHIO REV. CODE ANN. §§ 121.04, 121.06 (Page 1969).

⁷ OHIO REV. CODE ANN. § 1541.01 (Page 1964).

each division are civil servants. The Chief of the Division of Parks and Recreation may "with the approval of the director of natural resources . . . determine policies and programs for the division . . ."⁸ The Division is entrusted with control and management of "[a]ll lands and waters dedicated and set apart for state park purposes."⁹ The powers of the Chief, which are set forth in § 1541.03 of the Ohio Revised Code, are basically development oriented—as opposed to preservation oriented.

The Division has the power to make rules and regulations for the use of lands and waters under its control.¹⁰ Rules have been promulgated regulating the conduct of the public in state parks. These rules regulate watercraft operation, docking permits and fees, park hours, camping, hunting and motor vehicle operation and other activities. The penalty for violation of any rule or regulation is a fine of not less than \$10.00 nor more than \$100.00 or imprisonment.¹¹ However, the Division is only now formulating an operating manual setting forth division policies and regulating the conduct of division personnel. To date the lack of a standard operating manual has led to problems of unequal enforcement of Division rules and a lack of uniformity in the administration of each park.

C. *Financing*

State parks are funded in several ways. Appropriations for land and facilities may be made by the General Assembly.¹² More significant, however, are revenues from operations, bond issues and federal funds. All revenues collected from leases of state lands, pipe permits, dock licenses, concession fees and "special privileges" must be deposited into the "state park rotary fund."¹³ Except for revenues required to be set aside for the payment of bonds, the fund is to be used for "the administration, operation, maintenance, development and utilization of lands and waters, and for facilities and equipment incident thereto . . . or for the further purchase of lands and waters . . ."¹⁴ This fund provides only a small percentage of the financing needed. For example, in fiscal year 1967-1968 revenues from operations were \$1,498,830.00 while expenditures were \$33,259,693.00.¹⁵ Ohio charges no admission fee to its state parks, notwithstanding a 1963 recommendation from the Ohio Legislative Service to the contrary, apparently subscribing to the theory that such a charge would reduce state

⁸ *Id.*

⁹ OHIO REV. CODE ANN. § 1541.03 (Page 1964).

¹⁰ OHIO REV. CODE ANN. § 1541.09 (Page 1964).

¹¹ NRP-15-01; Rules and Regulations Governing Public Use of Lands and Waters under Supervision and Control by the Ohio Division of Parks and Recreation.

¹² OHIO REV. CODE ANN. § 1501.07 (Page 1964).

¹³ OHIO REV. CODE ANN. § 1541.22 (Page 1964).

¹⁴ *Id.*

¹⁵ 1967 Report of the National Conference on State Parks.

park attendance.¹⁶ There is a use charge, however, on nearly all activities except swimming. The bulk of the camping cabins in the state parks sleep six and are in the \$18.00 range. Campsites run as low as \$1.25 a day during the season and no higher than \$2.00 for those sites with electricity. Primitive campsites are free. The charges seem quite reasonable but are now being raised; public hearings on the increases have been held.

Most of the facilities in the parks are state operated. However, the three state built lodges—the Ohio Inns—are run by concessioners.¹⁷ Bids for concessions are solicited on the basis of both a percentage of gross and a flat fee; the concessioner pays whichever is higher each year.¹⁸ The concession may be automatically renewed after the first four year period but must be reopened to bids at least every eight years.¹⁹ To a lesser degree this concession arrangement is used for marinas, boat rentals and food vendors. Except for limits on charges, none of the services provided by concessioners are regulated. In the case of the lodges, the state regulation of charges is necessary since there are no privately operated hotels in direct competition with them.

The bulk of Ohio's funds are raised through bonds issued pursuant to §§ 1501.12-1501.15 of the Ohio Revised Code:

The bonds of each issue shall be dated, shall bear interest at a rate or rates not to exceed eight per cent per annum, and shall mature at such time or times, not to exceed forty years from their date or dates, as determined by the director, and may be made redeemable before maturity, at the option of the director, at such price or prices and under such terms and conditions as are fixed by the director prior to the issuance of the bonds.²⁰

The Director of Natural Resources has the authority to issue these bonds in order to acquire land for the "establishment or enlargement of state parks" and for "acquiring, constructing, enlarging, equipping, furnishing and improving public service facilities . . . and making land improvements incidental thereto."²¹

These funds are not a debt of the State; principal and interest on them is payable only as provided by statute:

To the extent provided in the order of the director or in the trust agreement securing the bonds, all admission fees, charges, and rentals and all other revenues derived from the lands and interests therein and public service facilities, for the acquisition, construction, enlargement, equipment,

¹⁶ OHIO LEGISLATIVE SERVICE COMM., THE ADMISSION FEE IN STATE PARK FINANCE (1963).

¹⁷ OHIO REV. CODE ANN. § 1501.09 (Page 1964) authorizes the leasing of public service facilities.

¹⁸ Revenue from state parks and public service facilities is paid into the state park rotary fund. See OHIO REV. CODE ANN. § 1501.11 (Page 1964).

¹⁹ OHIO REV. CODE ANN. § 1501.10 (Page 1964).

²⁰ OHIO REV. CODE ANN. § 1501.12 (Page Supp. 1970).

²¹ *Id.*

furnishing, or improvement of which bonds are issued, except such part as is necessary to pay the cost of maintaining, repairing, and operating them during any period in which such cost is not otherwise provided for, shall be pledged to the payment of the principal of and interest on such bonds.²²

Much of the operating revenue earmarked for the state park rotary fund may thus be diverted to pay off bonds. However, bonds may also be paid by the issuance of state park revenue refunding bonds.²³ This use of debt financing rather than taxation has been popular in Ohio. It has the benefits of increasing the revenues immediately available and aiding efficient financial planning over time. However, borrowing reduces the resources available in the future. To meet interest and principal payments the government will eventually have to cut spending. Public debt is a "means of shifting the final fiscal liability forward in time to 'future generations.' . . ."²⁴ Arguably, however, the use of debt to finance projects which will yield benefits in the future—such as parks—will not be a burden on our descendants since they will benefit from the expenditures.

Federal funds are another potential source of money for the state park system.²⁵ The Division of Parks and Recreation does not know how much federal aid they have received or under what programs. Apparently § 1501.20 of the Ohio Revised Code was enacted in order for the state to qualify for federal aid under the Water Quality Management Act. Some federal programs require a statewide plan in order to qualify for aid but no such plans have been drafted. Finally, the state must provide 40 percent matching funds for any federal grant but the annual report published by the Department of Natural Resources is too sketchy to reveal whether such funds have been expended.

D. *State Park Statistics*

The most complete statistics available on Ohio State Parks are for the years 1967-1968. In some areas, however, these can be updated to 1970. The last national comparison of state park statistics was made in 1967 by the National Conference on State Parks, a branch of the National Recreation and Park Association. Ohio parks were generally ranked third, behind New York and California. In total acreage, Ohio ranked ninth in 1967 with 126,245 acres dedicated to state parks. At that time, however, the state was midway through a program to increase and improve outdoor recreation facilities. In the 1967 survey Ohio was ranked fourth in land acquisition with 7,067 acres. From 1965 to 1968 46,000 acres of land were acquired and 8,000 acres of water were impounded. By 1970

²² OHIO REV. CODE ANN. § 1501.14 (Page 1964).

²³ OHIO REV. CODE ANN. 1501.12 (Page 1964).

²⁴ J. BUCHANAN, PUBLIC FINANCE IN DEMOCRATIC PROCESS 263 (1967).

²⁵ OHIO REV. CODE ANN. § 1501.02 (Page 1964).

total acreage was 192,774—54,754 of water and 138,020 of land. In addition, there are 131,477 acres of state forests lands adjacent to park facilities which park visitors may enjoy. The 1967 survey ranked Ohio third in the nation in attendance behind New York (38,339,473) and California (35,668,084). Total attendance for fiscal 1967-1968 was 26,181,622. Use of overnight facilities was rated nationally as follows:

Cabin guest days	3rd
Tent and trailer camper days	3rd
Lodge guest days	6th
Organized camper days	25th

There is no breakdown that would indicate what percentage of these visitors come from other states. Considering the distance most of the parks are from interstate highways it is probably not a significant proportion.

In 1968, 1674 new Class "A" campsites²⁶ were completed and current plans are to double these sites between 1968 and 1975. Ninety new vacation lodge units were completed in that year and over 300 new units and five new lodges are to be completed by 1975. From 1963 to 1968, 295 vacation cabins were constructed; another 500 are planned to be available by 1975. It is not yet known whether the new administration will proceed with these expansion plans. According to 1970 statistics, Ohio state parks have the following overnight facilities:

Cabins	344
Lodge rooms	186
Family campsites	5371
Group campsites	107
Primitive campsites	795

In fiscal year 1969-1970, total attendance was 32,640,346.²⁷

In 1967 Ohio was ranked third in total funds available. The bulk of these funds (\$32,389,158.00) came from bond issues (\$29,000,000.00). Only California had a larger bond issue (\$85,603,053.00). However, Ohio rated only eleventh nationally in revenue from regular appropriations and eighth in revenue from operations. Ohio was ranked third in total expenditures with \$33,259,693.00 and was surpassed only by California (\$65,399,650.00) and New York (\$35,873,991.00). The state was down to fifth, however, in total expenditures anticipated for 1968 (\$13,978,826.00). The bulk of expenditures in 1968 (\$11,675,724.00) were on facility improvements such as campsite and cabin construction

²⁶ Designed for the somewhat-less-than-vigorous-explorer, a Class "A" campsite includes running water, drinking fountains, drains, flush toilets, laundry and shower facilities, picnic tables, outdoor grills and frequently electricity.

²⁷ Recently, in an economy move prompted by the legislature's inability to agree on a new state tax plan and budget the governor closed the state parks. This action angered many campers who were forced to change their vacation plans. For some discussion of the economic and human impact of the governor's action see Switzer, *Camper's Vent Anger at Gilligan's State Park Closings*, The Columbus Dispatch, September 29, 1971, at 55A, col. 1.

and dam repairs. In 1967 Ohio was only rated sixth nationally in both total year-round employees (481) and seasonal employees (621). Curiously, Ohio rated second in consulting firms employed (27).

E. *Policy and Problems*

Debate is raging on the national level as to whether the purpose of a park system should be to preserve nature or to provide recreation for the taxpayers who support it. There is no such debate in Ohio—maximum utilization is the touchstone of Ohio park policy. As mentioned above, the canal lands were set aside expressly for the purpose of providing the public with recreation areas. Current Ohio legislation on state parks always provides for constructing and improving facilities but preservation is rarely mentioned. The policy of the Division of Parks and Recreation has been development oriented. One of its goals is to provide recreation facilities which are accessible to all of Ohio's citizens. To this end lodges, cabins, marinas, etc., have been constructed as outlined above. In addition, the Division is planning a system of "scenic roads" which will permit sightseers to drive through the parks.

The existing facilities are admittedly overused—especially in season—and there is no present plan to restrict use in the future. Overcrowding is annoying. There are long waiting lists for lodge accommodations and campsites are within earshot of each other. More serious, overuse threatens the natural beauty of the parks. The primitive camping areas have no restrictions on space between campsites. Land acquisition for state parks has slowed in the last few years and large scale land acquisition is not expected in the future due to such factors as rising land costs and competition from real estate developers. In order to minimize the damage overuse can cause in existing parks, one of two theories on facility distribution is followed. The method least used in Ohio is to disperse visitors thinly over as large an area as possible and hope no one area is seriously damaged. The method most commonly followed in Ohio is to concentrate all facilities in as small an area as possible and let its natural beauty be ruined in the hope of saving the larger park area. Only 15 percent of Ohio's park lands are highly developed for use. The other 85 percent are left in their natural state. Another benefit of concentration, as opposed to dispersement, is that facilities can be provided more cheaply in a smaller area. It is also possible to manage with fewer employees when there is less area to patrol. Ohio parks are chronically understaffed and there is a threat that money formerly appropriated for personnel may be reduced. This problem has been aggravated by decisions to keep parks open year-round. Lack of personnel and overuse have combined to produce such problems as littering and vandalism. In some areas a serious strain is placed on sewage disposal, but the Division denies that any of the

inland waters included in the state park system are seriously threatened by pollution. While there is some doubt about this claim, the Division insists that its only pollution worries are the Lake Erie beaches. The Division also claims that the hordes of visitors have not created any type of crime problem except vandalism.

Thus, it can be seen that the Ohio Division of Parks and Recreation has vigorously and successfully pursued a program intended to provide recreation facilities to all Ohio residents. This program is well established and continuing. It is now time to examine the efforts of the Department of Natural Resources to preserve areas of natural beauty and scientific or biological interest within the state including, perhaps, the underdeveloped 85 percent of the state park lands.

III. NATURAL AREAS²⁸

A. *Introduction*

Prior to the passage of the Natural Areas Act in 1970²⁹ there was no coordinated statewide program for the preservation of Ohio's natural area resources. A few such areas were publicly owned but most were privately owned with no guarantee of preservation. Indeed, even public ownership was no guarantee of protection since such areas could readily be used for other public purposes such as roads, dams and reservoirs. The "highest and best use" of these areas was not necessarily natural area preservation. Certain conservation minded private organizations like the Ohio chapter of the Nature Conservancy had actively been engaged in protection through purchase and conveyance of natural areas to universities, museums and other responsible agencies.³⁰ The Division of Parks, Wildlife and Forestry had some power of protection over those natural areas located in areas under their jurisdiction, but the priorities of recreation, timber growth and cutting and public hunting threatened the more delicate of these natural areas. With the passage of the Natural Areas Act in 1970, nature lovers may now hope that a state wide protective program can exist within the Department of Natural Resources.

²⁸ OHIO REV. CODE ANN. § 1517.01 (Page Supp. 1970) defines a natural area as: [A]n area of land or water which either retains to some degree or has re-established its natural character, although it need not be completely undisturbed, or has unusual flora, fauna, geological, archeological, scenic, or similar features of scientific or educational interest.

²⁹ OHIO REV. CODE ANN. §§ 1517.01-09 (Page Supp. 1970). This Act became effective August 31, 1970.

³⁰ The Nature Conservancy is an independent organization of laymen and biologists and is incorporated in the District of Columbia for non-profit and scientific purposes. Since the organization of the Ohio Chapter in 1958, it has managed to save Buzzardroost Rock and Lynn Prairie in Adams County; Dysart Woods in Belmont County; Clifton Gorge in Greene County; Stillfork Swamp in Carroll County; Mentor Marsh, Daykin Swamp and Kimball Woods in Lake County.

B. *The Origin*

The Natural Areas Act traces its origin from several sources. Certainly some impetus for its introduction and passage came from the Wilderness Act of 1964.³¹ Another significant impetus was the "Natural Areas Project" undertaken by the Ohio Biological Survey in 1958.³² This project assembled, listed and evaluated a large number of natural areas in Ohio. A revised list of such areas was last prepared in 1965 and contains descriptions of 212 areas located in 66 counties.³³ Although now out of date, this study is still the most comprehensive available and was used extensively by the Department of Natural Resources in the planning of the Natural Areas Act. The factor most responsible for the Act was Research Report #89 of the Ohio Legislative Service Commission Natural Areas Study Committee. This report studied the needs for such a program, analyzed existing programs in other states,³⁴ and made specific recommendations to the Legislature. The Natural Areas Act implements those recommendations. This Act, like the Scenic Rivers Act discussed below, is short and not complex. Its primary purpose is to protect outstanding and irreplaceable examples of the state's native landscape,³⁵ and to that end it directs the Department of Natural Resources to acquire a "system of nature preserves."³⁶

An Ohio Natural Areas Council was also created to provide advice to the director of Department of Natural Resources on the administration, protection and preservation of natural area. This Council consists of seven voting members plus the director of the Department of Natural Resources with the requirement that natural history museums, metropolitan park districts, colleges and universities and outdoor education in primary and secondary schools each be represented. Although the Council has no rule making power it has the power to review and make recommendations on Department of Natural Resources criteria for selection and acquisition, protection and use, and extent and type of visitation of nature preserves.³⁷

The Natural Areas Act covers a broad variety of uses and purposes:

- (A) For scientific research . . . ;
- (B) For the teaching of biology, natural history, ecology, geology, conservation . . . ;

³¹ 16 U.S.C. §§ 1131-1136 (1964).

³² The Ohio Biological Survey is an organization of more than 25 Ohio institutions with an office at Ohio State University.

³³ The Ohio Biological Survey, Natural Areas Project. A Summary of Data to Date (Revised January, 1965) 3 [hereinafter cited as Natural Areas Project].

³⁴ OHIO LEGISLATIVE SERVICE COMMISSION, REPORT NO. 89: PRESERVATION OF NATURAL AREAS 3 (1969).

³⁵ OHIO LEGISLATIVE SERVICE COMMISSION, SUMMARY OF LEGISLATION 110 (1970).

³⁶ OHIO REV. CODE ANN. § 1517.02 (Page Supp. 1970).

³⁷ OHIO REV. CODE ANN. § 1517.04 (Page Supp. 1970).

- (C) As habitats for plant and animal species . . . ;
- (D) As reservoirs of natural materials;
- (E) As places of natural interest and beauty;
- (F) For visitation whereby persons may observe and experience natural, biotic and environmental systems . . . ;
- (G) To promote understanding and appreciation of the aesthetic, cultural, scientific and spiritual values of such areas . . . ;
- (H) For the preservation and protection of nature preserves against modification or encroachment resulting from occupation, development or other use which would destroy their natural or aesthetic conditions.³⁸

Areas may become part of the nature preserve system by three related methods. The Department of Natural Resources may purchase areas and dedicate them as preserves;³⁹ private land owners may dedicate areas as preserves with the concurrence of the Council and Department of Natural Resources;⁴⁰ and any department, agency and political subdivision of the state, counties, townships, municipalities, park and conservancy districts, college or university and school districts may dedicate natural areas under their jurisdiction.⁴¹ An area is established as a nature preserve when articles of dedication, as described in § 1517.05 of the Ohio Revised Code, have been filed by the owner or governmental agency having jurisdiction in the office of the county recorder's office in the county of location of the area.⁴² As a result of this procedure a standard title search can be employed by purchasers to protect themselves from acquiring land containing dedicated areas.

C. *The Protective Features*

The dedication procedure performs one of the most important protective functions of the Act. The county recorder may not accept articles of dedication unless they have been accepted by the director of the Department of Natural Resources. The director:

[M]ay not accept articles of dedication unless they contain terms restricting the use of the land which adequately provide for its *preservation and protection against modification or encroachment* resulting from occupation, development, or other use which would destroy its natural or aesthetic conditions⁴³

The articles of dedication are strengthened by the statutory provision authorizing the Attorney General, upon request of the director of Department of Natural Resources, to bring an injunctive action to enforce their

³⁸ OHIO REV. CODE ANN. § 1517.05 (Page Supp. 1970).

³⁹ *Id.*

⁴⁰ *Id.* The director may not accept such dedication unless funds and services are available for their preservation and protection.

⁴¹ OHIO REV. CODE ANN. § 1517.08 (Page Supp. 1970).

⁴² OHIO REV. CODE ANN. § 1517.05 (Page Supp. 1970).

⁴³ *Id.* (emphasis added).

terms.⁴⁴ In addition, the Coordinator of the Scenic Rivers and Natural Areas in the Department of Natural Resources has indicated that the director will not accept such articles unless they provide for reversion to the dedicator if used for any other purpose than natural area preservation. This protective aspect even applies to land dedicated by state agencies, e.g., Divisions of Parks, Forestry or even the Department of Natural Resources. Even though nothing in the Act should be construed as interfering with the purposes stated in the establishment of any state or local park, forest or preserve, any agency administering an area dedicated as a nature preserve:

[S]hall be responsible for preserving the character of the area in accordance with the articles of dedication and the applicable rules and regulations . . . established by the Department of Natural Resources . . .⁴⁵

A conservation minded park chief or director by dedicating areas under his jurisdiction as nature preserves could assure continued protection even if, with a change in political administration, a more developmental minded director or chief were subsequently appointed. This would be one way of protecting sections of state parks from the ever present threat of destruction through overuse and development.

Another major protective feature of the Natural Areas Act is the provision that:

Nature preserves . . . are to be held in trust, for the uses and purposes set forth . . . for the benefit of the people of the state of present and future generations They shall not be taken for any other use except another public use after a finding by the department of the existence of an imperative and unavoidable public necessity . . .⁴⁶

and the provision that:

Before the department . . . makes any finding . . . it shall give notice of such proposed action and an opportunity for . . . a public hearing in the county in which the preserve is located.⁴⁷

Unfortunately these two sections provide only limited immunity from appropriation and do not prevent another state agency from taking a nature preserve. However, they do make it much more difficult to appropriate by requiring an imperative and unavoidable public necessity and a public hearing. This hearing requirement should give state and local conservation groups the opportunity to influence the Department of Natural Resources as to the need for continued preservation.

⁴⁴ *Id.*

⁴⁵ OHIO REV. CODE ANN. § 1517.09 (Page Supp. 1970).

⁴⁶ OHIO REV. CODE ANN. § 1517.06 (Page Supp. 1970).

⁴⁷ OHIO REV. CODE ANN. § 1517.07 (Page Supp. 1970).

D. *A Statewide System of Nature Preserves—Plans for the Future*

Since the Natural Areas Act has been in effect for less than a year no statewide system of nature preserves yet exists. But such a system is being planned. The Department of Natural Resources has just completed a partial listing of natural areas⁴⁸ but the list is by no means complete. The Department of Natural Resources is seeking to supplement this list by soliciting proposals for natural areas from the public and other state agencies. Natural area proposal forms are being circulated among field personnel of the more conservation oriented local and state organizations and agencies.⁴⁹ The Department of Natural Resources is also in the process of drawing up rules and regulations for use, visitation and protection.

The Act has been given substantial funding. In the last fiscal year \$400,000.00 was appropriated, primarily for natural areas acquisition and organizational expenses.⁵⁰ The Department of Natural Resources has used part of this money to acquire some land for dedication. It has found that many natural areas are reasonably priced, even cheap, because, being mostly bogs, swamps, marshes, dunes and gorges, they are not the most fertile or developable land. Also, most of the areas purchased have been in rural areas so that the higher price of urban lands has not been a factor. According to Mr. Richard Mosley, Coordinator of Natural Areas and Scenic Rivers in the Department of Natural Resources, it is unlikely that federal funds for acquisitions will be available in the near future since at present the priority on federal funds is for development projects.

E. *A Classification System*

Instead of having only one broad "natural areas class," the Department of Natural Resources has decided upon a three class system for natural areas: (A) Scientific Nature Preserves; (B) Interpretive Nature Preserves; (C) Scenic Nature Preserves.⁵¹ Each class has separate criteria for inclusion and different levels of protection and use.

Type (A):

(1) . . . [A]reas which represent as closely as possible the original natural features of the state.

(2) Are of the highest quality and are designated for preservation of a biological community, plant species, animal species or geological feature.

⁴⁸ A Guide to Outdoor Educational Areas, currently available at the Department of Natural Resources building.

⁴⁹ These forms are available at the Ohio Department of Natural Resources.

⁵⁰ OHIO LEGISLATIVE SERVICE COMMISSION, *supra* note 35, at 111-112. Roughly twice this amount has been requested for the current fiscal year.

⁵¹ Classification forms are available at the Ohio Department of Natural Resources.

- (3) Restricted Access—entrance by written permission only.
- (4) Its use, even for research, should be under restrictions in order to maintain the feature for which it was established.⁵²

It is apparent from these criteria that Department of Natural Resources rules and regulations for use of (A) type areas should be highly protective.

Type (B):

- (1) . . . [A]reas which represent outstanding examples of native plant and animal communities or other features of natural history or are areas which represent as closely as possible the original natural features of the state.
- (2) Can withstand moderate use for educational purposes in addition to research uses.
- (3) Access limited to supervised groups, guided tours, and by permission only.
- (4) Hiking trails, observation platforms, walkways and interpretive devices may be permitted but other improvements and facilities are permitted in buffer areas only.
- (5) Special management practices may be needed to maintain areas and prevent over-use.⁵³

The last class, (C) Scenic Nature Preserves, is defined in such a way as to allow even greater use.

Type (C):

- (1) . . . [A]reas of scenic excellence, comparatively undisturbed or in the process of returning to natural (original) condition.
- (2) Can withstand moderate to heavy use. Portions of existing state, county or local parks and forests may qualify in this category or higher if it meets above criteria.
- (3) Improvements and facilities may be permitted on fringe of areas—trails and interpretive devices permitted within areas.
- (4) Management practices may be needed—zoning areas for light use, etc.⁵⁴

It is significant to note that both types (B) and (C) would include areas that are not in their virginal state. This is a necessary policy in a state as developed and populated as Ohio. As the Natural Areas Project of the Ohio Biological Survey points out, some of the state's most scenic natural areas were logged or pastured during the state's early history but have recovered to contain fine samples of second growth forest.⁵⁵

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Natural Areas Project, *supra* note 33 at 6, 9, 11.

F. *An Evaluation*

How successful or unsuccessful the Natural Areas Act will be is a question that must be delayed until the Act has been fully implemented and in operation for at least a few years. All that this comment can do at this early stage is to examine the statutory language for hints as to its ultimate effectiveness. This comment has already discussed three of the protective provisions in the Act. The dedication procedure could be very protective but the limited appropriation provision appears quite vulnerable to political pressure, especially if there is public apathy. The classification scheme offers promise for real protection. To a large extent many of the areas that eventually will be part of the nature preserve system already have a degree of self-protection provided by their own obscurity, inaccessibility and unsuitability for parks or recreational areas. The average person is drawn to a state park by its diversified recreational and outdoor activities. Often these people take only a passing interest in the scientific or ecological value of many natural areas. Part of this protection by obscurity is sacrificed by the Natural Areas Act since it will publicize and mark natural areas and make them more accessible.⁵⁶ Hopefully the protection provided in place of this obscurity will provide a greater degree of and a much longer lasting protection. Unfortunately, no matter how skillfully drafted the protective act or how diligently enforced it is, as long as the state's population increases and the state's open and undeveloped land decreases, our natural area resources will never truly be safe from all encroachment.

IV. SCENIC RIVERS

A. *The Scenic Rivers Act*⁵⁷

Ohio's Scenic Rivers Act vests in the director of the Department of Natural Resources the power to create a system of "scenic river areas" and to prepare plans for their development and use as part of a series of "comprehensive statewide plans for water management and outdoor recreation."⁵⁸ The Scenic Rivers Act directly coordinates with the federal Wild and Scenic Rivers Act of 1968.⁵⁹ Section 1501.16 of the Ohio Revised Code provides that:

⁵⁶ OHIO REV. CODE ANN. § 1517.02 (Page Supp. 1970) provides that the Department of Natural Resources shall publish and disseminate information pertaining to nature preserves, and establish an appropriate system for marking nature preserves.

⁵⁷ OHIO REV. CODE ANN. §§ 1501.16-1501.19 (Page Supp. 1970).

⁵⁸ OHIO REV. CODE ANN. § 1501.16 (Page Supp. 1970).

⁵⁹ 16 U.S.C. §§ 1271-1787 (Supp. V, 1965-1969); 16 U.S.C. § 1282 (Supp. V, 1965-1969) provides that:

The Secretary of Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreations plans . . . needs and opportunities for establishing State and local wild, scenic and recreational areas.

The director may cooperate with federal agencies administering . . . scenic or wild river areas.

Section 1501.18 provides that:

The director . . . may administer federal financial assistance programs for scenic river areas.

The Scenic Rivers Act is short and uncomplicated. The director of the Department of Natural Resources can propose for establishment as a state "scenic river area" any water course which in his judgment possesses "water conservation, scenic, fish, wildlife, historic or outdoor recreation values which should be preserved."⁶⁰ This "scenic river area" includes a protective corridor of riparian land of sufficient width to preserve and protect the river.⁶¹ After notice of such proposal is given to the designated state agencies and governmental subdivisions and after the proscribed waiting period, the area automatically becomes a "scenic river area" when the director of Department of Natural Resources enters it as such in his journal.⁶² The director then has the power to appoint a ten man advisory council for each "scenic river area." These advisory councils advise the director on acquisitions and developments in the scenic river area which may affect local interests.⁶³

B. *Present Scenic River Areas*

At present, portions of two rivers, the Little Miami and the Sandusky, have been designated as state scenic river areas.⁶⁴ A comparison of these two rivers gives a good indication of the broadness of the "scenic river area" class. The Sandusky may deserve classification because of its water conservation, recreation or fishing value but it certainly has less scenic value than the Little Miami.⁶⁵ The advisory councils for these two rivers have already completed studies of each river and have made recommendations to the Department of Natural Resources. These recommendations call for a general plan of diversified use such as canoeing,

A detailed analysis of the Wild and Scenic Rivers Act is presented in Tarlock and Tippy, *The Wild and Scenic Rivers Act of 1968*, 55 CORNELL L. REV. 707 (1970).

⁶⁰ OHIO REV. CODE ANN. § 1501.16 (Page Supp. 1970).

⁶¹ *Id.*

⁶² OHIO REV. CODE ANN. § 1501.16 (Page Supp. 1970).

⁶³ OHIO REV. CODE ANN. § 1501.16 (Page Supp. 1970) provides that:

The Director shall publish his intention to declare an area a scenic river area at least once in a newspaper of general circulation in each county, any part of which is within the area, and shall send written notice . . . to the legislative authority of each county After thirty days from the last date of publication . . . the director shall enter a declaration in his journal that the area is a scenic river area. When so entered, the area is a scenic river area.

⁶⁴ The upper portion of the Little Miami was designated on April 23, 1969; the Sandusky on January 5, 1970.

⁶⁵ Interview with Mr. Richard Mosley, Coordinator Natural Areas and Scenic Rivers, Department of Natural Resources, February 12, 1971, [hereinafter cited as Mosley Interview].

picnicking, fishing and overnight camping for canoers, but recommend restrictions on large recreational areas along the rivers. The Department of Natural Resources has already begun purchasing land along the Sandusky to implement the Sandusky Council's recommendations. Other plans call for the creation along the Little Miami of nine new park areas containing approximately 2100 acres to supplement the six existing parks along that river. Twenty canoe accesses are also planned for the Little Miami.⁶⁶ Seven other state rivers, the Maumee, Olentangy, Grand, Mohican, Tuscarawas, Little Muskingum and Little Beaver, plus the lower portion of the Little Miami, are now under state study. The Maumee, Little Beaver and Little Miami are also under national study under the Wild and Scenic Rivers Act.⁶⁷

C. *Evaluations and Suggestions*

The Scenic Rivers Act provides some significant contributions toward preservation of our river resources. For example, the state river studies that it has engendered were sorely needed and should be continued and expanded. However, several major weaknesses in the Act seriously detract from its effectiveness. First, the Act provides no real protection against potentially harmful road development within scenic river areas. It provides that:

No state department, agency, or political subdivision may build or enlarge any highway . . . or structure within a scenic river area outside the limits of a municipal corporation without consulting with the director of natural resources.⁶⁸

Since this section requires only consultation with and not approval of the director, construction could be carried out in a scenic river area even if it were disapproved by the director as harmful. The director would be forced to rely on his or the local advisory council's political or personal influence to prevent such destructive development within scenic river areas. What is needed is an amendment to § 1501.17 so that approval of the director would be required. This would allow the Department of Natural Resources to develop and administer the kind of comprehensive statewide water management plan contemplated by the Act.

A second major weakness lies in the Act's failure to provide for penalties for violations of its provisions. Thus, even if a state agency or political subdivision does not consult with the Department before undertaking construction in a scenic river area, no proscriptive action could be taken.

⁶⁶ *Id.*

⁶⁷ 16 U.S.C. § 1276(a) (Supp. V, 1965-1969). The Wild and Scenic Rivers Act § 1276(c) provides that a state may request a joint state-federal study of any one of the rivers designated in subsection (o).

⁶⁸ OHIO REV. CODE ANN. § 1501.17 (Page Supp. 1970).

A third weakness stems from the fact that:

Declaration by the director that an area is a scenic river area does not authorize the director . . . to restrict the use of land by the owner thereof or any person acting under his authority⁶⁹

Even after a river and the necessary protective corridor have been designated as a scenic river area, the riparian owners can continue to do with their land as they choose. Thus, the only way that the Department of Natural Resources can assure protection for a scenic river area is by outright purchase of a fee simple or scenic easement. This may prove prohibitively expensive unless federal funds are made available.⁷⁰ The Act does not specifically authorize such purchases;⁷¹ however, the director of the Department of Natural Resources has such power under § 1501.01 of the Ohio Revised Code:

He [the director] may also acquire by purchase, lease, or otherwise such . . . property rights or privileges . . . as are necessary for the purposes of the department

The greatest weakness of the Act is its failure to provide for a classification system for Ohio's state rivers similar to that provided in the Wild and Scenic Rivers Act—wild, scenic, recreational.⁷² This multi-classification system allows the federal act to reach many more types of rivers and yet keep the standards for qualification as a wild river area and, to a lesser degree, a scenic river area high. Since the Scenic Rivers Act provides for only one broad class, it has the inherent weakness that no distinction in quality of rivers or sections of the same river can be maintained. There is no assurance that the "scenic river areas" class will not be downgraded by the designation, as a scenic river area, which includes state rivers that are grossly polluted and overdeveloped. It is reasonable to assume that there will be considerable public and political pressure for lib-

⁶⁹ OHIO REV. CODE ANN. § 1501.16 (Page Supp. 1970).

⁷⁰ Mosley Interview, *supra* note 65.

⁷¹ OHIO REV. CODE ANN. § 1501.18 (Page Supp. 1970) implies that the Department of Natural Resources has such power:

The director may expend funds for construction, maintenance, and administration of facilities in scenic river areas. . . . The director may condition such expenditures, *acquisition of land or easement* . . . within a scenic river area, upon the adoption and enforcement of adequate flood plain zoning regulations. (Emphasis added).

⁷² 16 U.S.C. § 1273 (Supp. V, 1965-1969) defines wild river areas as:

Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

scenic river areas as:

Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

and recreational river areas as:

Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

eral designations since these would provide some degree of protection and, more importantly, would make state and federal funds more readily available.

A good example of this problem is the Little Miami River. The upper portion of that river, approximately 89 miles, has been designated as a state scenic river area, but the lower portion, approximately eleven miles, because of heavy development and proximity to the Cincinnati metropolitan area has been denied such designation by the Department of Natural Resources. However, because of the value of this lower portion for water conservation and recreation use, local groups have been particularly insistent upon forcing designation of the lower portion as a state scenic river area. According to Mr. Richard Mosley, the Coordinator of Natural Areas and Scenic Rivers in the Department of Natural Resources, if such groups are successful, there is nothing to prevent other local groups from demanding and perhaps getting similar designation for a river such as the Cuyahoga.⁷³

If the Scenic Rivers Act were amended to include two classes of rivers—scenic and recreation, and if suitable criteria for each class were drawn up, the scenic class could maintain a high level of quality while at the same time rivers qualifying for the recreation class could also be developed and protected. Suitable criteria, which would reflect quality and use, should not be difficult to formulate in view of the already existing criteria at the federal level.⁷⁴ Other changes in Ohio laws and policies would greatly increase the effectiveness of the Scenic Rivers Act. Changes in water pollution standards are definitely needed so that the Department of Natural Resources will actually have the power to protect "scenic river areas." Currently water pollution prevention is divided, with the Department of Natural Resources (through the division of wildlife) having authority when fish or animal kills are involved, and the Department of Health when public health is threatened.⁷⁵ The Ohio Water Pollution Control Board does coordinate many pollution control efforts; however, the director of the Department of Natural Resources has only one vote on that board and thus cannot assure a high degree of scenic river protection through it.⁷⁶

Another example of needed change is in the siltation problem. The Ohio Water Pollution Control Board does not consider silt as a pollutant and thus no standards have been developed concerning silt in determining water quality. Yet silt has become a major problem with many of Ohio's rivers. The Little Miami is an example of a scenic river particularly susceptible to this type of pollution since it has significant gravel

⁷³ Mosley Interview, *supra* note 65.

⁷⁴ See note 15 *supra*.

⁷⁵ Mosley Interview, *supra* note 65.

⁷⁶ OHIO REV. CODE ANN. § 6112.02 (Page Supp. 1970).

removal operations along its banks which utilize river water for washing purposes and return it in its silted form.⁷⁷

Another needed change is in the area of flood plain zoning. At present many types of zoning exist along Ohio's rivers, primarily because zoning is a local concern. This zoning power is a jealously guarded local prerogative, which makes it unlikely that a coordinated statewide zoning program can be based on local cooperation. The Little Miami river area is an excellent example of uncoordinated river area zoning. There are at least nine different categories of zoning along its course including everything from protective flood plain zoning to heavy industry zoning.⁷⁸ Protection of this scenic waterway will be difficult if at the whim of a local zoning board an area can be zoned to accommodate industrial or residential developers. Ohio needs a comprehensive statewide zoning power for the scenic river areas. This would allow the state to protectively zone a corridor along each designated river and would eliminate part of the need for large expenditures for fee simple or scenic easement acquisition.

The Scenic River Act is just one small step toward protection of our valuable river resources. However, even if the Act were strengthened as suggested above, this would mean very little unless the people of the state, especially local communities, take pride in their rivers and know how to use them correctly. Thus, there must be a statewide public information program in order to instill in the public an awareness of the value of scenic river preservation.

V. PARK DISTRICTS

A. *Statutory Basis*

In 1917 the Ohio General Assembly enacted the Ohio Park District Legislation⁷⁹ making it possible for local communities to establish autonomous park districts by application to the probate judge of the county within which the district is to be located.⁸⁰ After this application has been filed and after the necessary public notice and hearing required by § 1545.03 of the Ohio Revised Code, the probate judge has the obligation to appoint a park commission board for the district.⁸¹ The park board administers the affairs of the park district, is a "body politic and corporate," and may sue and be sued. It may employ a staff of park admin-

⁷⁷ Mosley Interview, *supra* note 65.

⁷⁸ *Id.*

⁷⁹ OHIO REV. CODE ANN. §§ 1545.01-1545.30 (Page 1964).

⁸⁰ OHIO REV. CODE ANN. § 1545.02 (Page 1964). Park Districts need not be limited to one county but there is a requirement that the park district does not cut up a tax district.

⁸¹ OHIO REV. CODE ANN. § 1545.05 (Page 1964). These park commissioners are appointed for overlapping three year terms.

istrators to perform the powers conferred upon it.⁸² The board may acquire, by gift, purchase or appropriation, lands and waters within or without the park district and may develop, improve and protect such areas for park use. The board has the power to formulate rules and regulations for such areas use and protection⁸³ and has the police power to enforce them.⁸⁴

B. *Financing the Park District*

The Ohio park districts have four major sources of funds. First, the park district may levy a tax not to exceed one-half of one mill in any one year on all taxable property within the park district for general operating expenses.⁸⁵ If this one-half of one mill proves insufficient the park board may submit, by resolution to the voters of the park district, the question of levying an additional three-tenths of one mill tax in addition to the one-half of one mill.⁸⁶ However, this additional three-tenths mill, if it is approved by the voters, can only be used for the purposes specified in the resolution.⁸⁷

Second, the board may issue bonds for the purpose of acquiring and improving lands. These bonds may be secured by the pledge of the districts' properties and revenues from rentals and concessions; however, the board may not pledge the taxing power of the district for payment and the bonds are not deemed indebtedness of the district.⁸⁸

Third, when the board makes improvements to park lands, it may assess up to 50 percent of such costs upon abutting, contiguous or adjacent benefitted land.⁸⁹ In the case of both, this assessment power and the tax levy power discussed above, the board may borrow money in anticipation of collecting the assessment or tax.⁹⁰

The fourth major source of funds is the Federal HHFA Open-Space land program. Most of the larger park districts have been successful in qualifying for participation in this program. However, most of the smaller districts because of their poor taxing bases have been unable to utilize the program for lack of the 50 percent matching funds.⁹¹

⁸² OHIO REV. CODE ANN. § 1545.07 (Page 1964).

⁸³ OHIO REV. CODE ANN. § 1545.09 (Page 1964).

⁸⁴ OHIO REV. CODE ANN. § 1545.13 (Page 1964).

⁸⁵ OHIO REV. CODE ANN. § 1545.20 (Page 1964).

⁸⁶ OHIO REV. CODE ANN. § 1545.21 (Page 1964).

⁸⁷ *Kinsey v. Bower*, 147 Ohio St. 66, 68 N.E.2d 317 (1946).

⁸⁸ OHIO REV. CODE ANN. § 1545.24 (Page 1964).

⁸⁹ OHIO REV. CODE ANN. § 1545.18 (Page 1964).

⁹⁰ OHIO REV. CODE ANN. §§ 1545.18, 1545.20 (Page 1964). In the case of anticipated tax revenue the boards may issue one year negotiable notes in an amount not in excess of 50 percent of the anticipated tax.

⁹¹ Interview with Mr. John Metzger, Deputy Director Columbus Metropolitan Park District, February 24, 1971 [hereinafter cited as Metzger Interview].

The active park districts also receive some income from permits, fees, services, concessions and rental of undeveloped property. The park districts also receive money from the Ohio Department of Highways for their maintenance of public highways in the parks. Currently the 14 active park districts share \$200,000.00 for road maintenance.⁹²

C. *Current Park Districts*

There are 25 existing park districts of which only 14 are active. The other 11 are "paper" park districts without a sufficient tax base to allow the establishment and maintenance of park systems. The most active park districts closely correlate with the major metropolitan areas of Ohio.

PARK DISTRICTS (1968 figures)

Major Metropolitan	No. Parks	Acres
1. Cleveland Metropolitan Park District	10	17,300
2. Akron Metropolitan Park District	9	5,030
3. Hamilton County Metropolitan Park District	4	5,717
4. Toledo Metropolitan Park District	—	—
5. Columbus Metropolitan Park District	7	5,200
6. Dayton-Montgomery County Park District	7	4,800
7. Lake County Metropolitan Park District	7	2,321
8. Lorain County Metropolitan Park District	6	2,257
9. Butler County Park District	8	1,286
	58	43,911
Other Active		
10. Ashtabula County Metropolitan Park District	1	22
11. Defiance County Metropolitan Park District	4	47
12. Geauga County Metropolitan Park District	2	574
13. Green County Park District	2	60
14. Wood County Park District	2	16
	11	719
	69	44,630
Inactive		
15. Clark County Park District	—	—
16. Lawrence County Park District	—	—
17. Licking Metropolitan Park District	—	—
18. Medina County Park District	—	—
19. Miami County Park District	—	—
20. Portage County Park District	—	—
21. Richland County Metropolitan Park District	—	—
22. Stark County Metropolitan Park District	—	—
23. Trumbull County Metropolitan Park District	—	—
24. Erie County Metropolitan Park District	—	—
25. Clermont County Park District	—	—

⁹² *Id.*

These statistics indicate several important things about Ohio's park districts. First, those with the greatest tax base have the largest park systems, but these districts also have the greatest needs. Second, the metropolitan park districts reduce the distance of travel which is one of the weaknesses of many of Ohio's state parks located in the southern less populated portion of the state. Third, the park district as a whole has an impressive number of parks and amount of total acreage. Thus, this system must help to reduce the overuse pressures on the state parks. Fourth, most of the inactive park districts are located in rural counties where the tax bases are low. In order to eliminate such "paper" park districts it has been suggested that the creation of a park district should be linked with a tax levy proposal so that if the people of the county approve of the creation of the park district they also approve a levy of sufficient size to allow the creation and maintenance of the park system.⁹³

No further effort will be made in this comment to discuss all of these park districts in detail. Rather, detailed discussion will be limited to the Columbus Metropolitan Park District.

VI. URBAN PARKS

An indication of the value of park facilities in modern urban society is perhaps best illustrated in the 1968 Report of The National Advisory Commission on Civil Disorders—popularly known as the Kerner Commission Report. Following the outbreak of riots experienced by most major American cities in 1967, the Kerner Commission polled inner-city dwellers of 20 affected communities. In assessing their grievances, ghetto residents ranked inadequate parks and recreation facilities as their fifth major complaint.⁹⁴ This complaint ranked higher on the list than even such common grievances as inadequate welfare programs and white racist attitudes.⁹⁵ Two cities ranked it as their most important problem.

As Ohio's cities grow larger, population density increases, and urban sprawl consumes more and more of our open space, the maintenance of adequate urban park lands assumes a role of growing importance. With many inner-city residents becoming virtual prisoners of ghettos, and with industrial and suburban housing developments consuming land which was formerly available to the more mobile citizens, the cities are forced to provide more park resources for their residents. An urban park program naturally engenders a complex set of problems. Included on the problem list are such areas as land acquisition, adequate planning, financing, and, in some communities, maintaining order within the parks.

⁹³ *Id.*

⁹⁴ REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 82-3 (1968).

⁹⁵ *Id.*

Many of the problems facing park planners and administrators today are evident in a study of the Columbus-area parks. This comment will focus primarily on the Columbus City Parks and the Columbus Metropolitan Park District which, as discussed earlier, is a political subdivision of the state intended primarily for the use of Columbus-area residents. Before considering the problems faced by these two agencies, some statistical data is illuminating.

A. *Columbus Division of Parks and Forestry*

The Division of Parks and Forestry is a subdivision of the Public Service Department of the City of Columbus and is administered by the Division Superintendent and his staff. The City Code establishes four advisory commissions who advise the Mayor through the Division Superintendent.⁹⁶ As of January 1, 1970 (the latest survey available) the city had 99 parks broken down as follows:⁹⁷

City parks and park lands	3,304.722 acres
Reservoir parks and park lands	1,270.045 acres
Reservoir water acreage	5,035.00 acres
Street parks	64.78 acres

Total Acreage 9,674.547 acres

These figures show an increase of over 500 acres since 1965 when the city held 9,168 acres of park land, including 5,035 acres of reservoir water acreage.⁹⁸

The city parks are organized on a three-tiered basis. The primary level is the neighborhood park which, as its name implies, is intended to serve the neighborhood immediately surrounding its location. Included in the neighborhood parks are four "mini-parks," i.e., lot sized playgrounds used primarily by children. Above the neighborhood parks are the community parks, designed to serve four or five neighborhoods of about a one and one-half mile radius. Whetstone Park (about 140 acres) in north Columbus is a community park. Finally there are area parks which range in size from 200 to 3,000 acres.⁹⁹ Within the urban park scheme generally, the city classifies the metropolitan parks as area parks¹⁰⁰ even though these are administered by a wholly separate political subdivision of the state.

⁹⁶ For a more thorough view of the administrative structure, see the organizational chart in the 1969 ANNUAL REPORT OF THE DIVISION OF PARKS AND FORESTRY.

⁹⁷ *Id.* under "Park Land Ownership" (pages not numbered).

⁹⁸ FRANKLIN COUNTY REGIONAL PLANNING COMMISSION, COMPREHENSIVE REGIONAL PLAN OF COLUMBUS AND FRANKLIN COUNTY: 1985 OPEN SPACE PLAN FOR CENTRAL OHIO 12 (1969) [hereinafter cited as BLUE PLAN].

⁹⁹ Interview with Harold Freiheit, Superintendent of Parks and Forestry [hereinafter cited as Freiheit Interview]; see also BLUE PLAN, at 46-56.

¹⁰⁰ Freiheit Interview, *supra* note 99.

B. *Columbus Metropolitan Park District*

The Metropolitan Park District has grown from 600 acres in 1960 to more than 5200 acres today.¹⁰¹ However, only about 2100 acres are presently in use.¹⁰² The rest will be developed in the next few years, as will be discussed later. Although the city park authorities consider the metropolitan parks to be area parks, these are probably more aptly described as regional parks.¹⁰³ The 1969 Progress Report of the Columbus Metropolitan Park Board indicates that the parks actually serve the entire ring of counties surrounding the metropolitan area. The philosophy behind the Park District is to provide natural areas for the citizens' enjoyment within a one-half hour drive from their homes.¹⁰⁴ The reference above to natural areas points out another basic difference in the Columbus and Metropolitan Park Systems. As will be seen later, the Columbus City Parks are designed primarily for outdoor recreation. The Metropolitan Districts, however, although providing recreation opportunities, are primarily conservation agencies.¹⁰⁵ Section 1545.11 of the Ohio Revised Code provides that:

The board of Park Commissioners may acquire lands either within or without the park district . . . *for the conservation of the natural resources of the state* (emphasis added.)

Also, unlike the city, the Municipal Board of Park Commissioners is a policy making board rather than an advisory board.

C. *Some Specific Problems*

1. Land Acquisition

A land acquisition program is, of course, essential for any park system which is to provide adequate facilities for those who use it. A major problem here, of course, is skyrocketing property values and the disappearance of suitable park land. A combination of both these factors spurred the Columbus Metropolitan Park Board into an aggressive land acquisition policy in the early 1960s.¹⁰⁶ As a result, the total acreage grew much faster than its development. Park development has now replaced acquisition as the primary concern of the Board. This is not to

¹⁰¹ Metzger Interview; *supra* note 91; see also Progress Report Columbus Metropolitan Park Ten Year Program, under "Land Acquisition" (pages not numbered) [hereinafter cited as Progress Report].

¹⁰² Developed parks are Blacklick Woods (632 acres), Blendon Woods (577 acres), Darby Creek (119 acres), and Sharon Woods (760 acres).

¹⁰³ See Progress Report, *supra* note 101, at "Park Standards and Criteria" (pages not numbered).

¹⁰⁴ Metzger Interview, *supra* note 91.

¹⁰⁵ See Progress Report, *supra* note 101 at "Public Use and Program."

¹⁰⁶ See Progress Report, *supra* note 101, at "Land Acquisition."

imply, however, that the metropolitan holdings are sufficient. Deputy Director Metzger indicates that Columbus would need around 8,000 acres in order to meet the national standard of 10 acres of natural regional park areas per 100 acres in the district. Very few cities meet this total, though some are further along than Columbus. The 1985 Open Space Plan of the Franklin County Regional Planning Commission (to be discussed below) contemplates that the metropolitan lands will total around 8,500 acres by 1985.¹⁰⁷

Though it does not show the phenomenal growth rate of the Metropolitan District, the city has also been steadily acquiring new land over the last several years. As indicated earlier, city parks now total in excess of 9,600 acres, including water areas. The 1985 Open Space Plan recommends that Columbus increase its park system by 174 parks (including 143 neighborhood parks) totalling 7,129 acres.¹⁰⁸ This recommendation (which includes almost half again as much ground space as Columbus now has) points out an interesting problem in Columbus. Most large cities have considerable trouble in providing adequate park area in the inner-city, and Columbus is no exception. However, Superintendent Harold Freiheit points out that there are two acres of park land in the inner-city for every one acre in the outer city. On a population density basis there is also more park area in the inner-city than the outer-city.¹⁰⁹ This is not to minimize the inner-city park shortage. Park facilities are still in short supply there, particularly neighborhood parks. However, a major problem in Columbus is land acquisition in the outer-city. Unlike many areas, Columbus is not surrounded by other cities or natural barriers. As the city's vigorous annexation program continues, the Division of Parks must provide available park lands for new area. Superintendent Freiheit states that every time the city annexes another square mile of land, the Division of Parks must spend \$60,000.00 to provide park service for that area.

2. Eminent Domain

Both the city and the metropolitan district can acquire park sites through the use of eminent domain. Section 717.02(u) of the Ohio Revised Code authorizes a city to acquire by "gift, purchase, lease, or condemnation, land, forest, and water rights necessary for conservation of forest reserves, water parks, or reservoirs, either within or without the limits of the municipal corporation" Section 717.02(n) permits cities to provide land for parks and public playgrounds. The power to

¹⁰⁷ See BLUE PLAN, *supra* note 98, at 67-68.

¹⁰⁸ *Id.*

¹⁰⁹ Superintendent Freiheit did not make exact figures available.

acquire the land for these purposes appears in § 717.02(y) which provides that:

Each municipal corporation may

. . . .

(y) acquire by gift, purchase, lease or condemnation, land, forest, and water rites necessary for conservation of forest reserves, water parks, or reservoirs, either within or without the limits of the municipal corporation

Also important is § 719.01 which provides that:

Any municipal corporation may appropriate, enter upon, and hold real estate within its corporate limits:

. . . .

(B) For parks, park entrances . . . and children's playground

In *pari materia* is § 719.02 which provides that when appropriating property under § 719.01 a city may, if reasonably necessary, acquire property outside the limits of the municipal corporation. Also in point is § 755.08 which authorizes a city to establish parks (or extend existing ones) within the city "or the territory contiguous thereto" through the power of eminent domain. The power of a city to acquire land by condemnation which lies outside its corporate limits in order to establish parks has been recognized by the courts. *Cincinnati v. Ziegler*¹¹⁰ held that regardless of the general rule that a city can exercise its power only within its corporate limits, it was nonetheless free to condemn and appropriate land contiguous to the city. Also in point is *McDonald v. Columbus*¹¹¹ which held that "[p]rovision for parks and recreational facilities is an exercise of the powers of local self government, and there is no constitutional barrier to the exercise of such power beyond the territorial limits of the municipality."¹¹²

The Metropolitan park districts derive their power to acquire property from § 1515.11 of the Ohio Revised Code. This section provides that the district may acquire property (1) by gift or device, (2) by purchase, or (3) by appropriation. Simply granting a park agency the power of condemnation is insufficient, however. Urban and suburban land is frequently scarce and, even if abundant, always expensive. Primarily because of expense, the cities just cannot afford to acquire all the land needed presently or that which may be needed in the future. As noted earlier, Columbus' vigorous annexation policy has caused an undersupply of recreational land in the more suburban areas. The obvious solution to the problem, of course, is more money—*much* more money. However obvious, this solution is not entirely practical since few cities in America

¹¹⁰ 16 Ohio N.P. (n.s.) 169 (1914).

¹¹¹ 12 Ohio App. 2d 150, 231 N.E.2d 319 (1967).

¹¹² *Id.* at Syllabus para. 1.

enjoy financial bliss. Methods are being developed and implemented, however, which may help the cities satisfy their need for open space.

3. Subdividers

Chapter 3121 of the Columbus City Code provides that in order to develop any land within a three mile radius of the city, a subdivider must file his plans with the city. The departments of planning, parks and forestry, and recreation are then required to submit plans for parks in the undeveloped area and to buy sufficient land to carry out their plans. This requirement is good, as far as it goes. It at least forecloses the possibility that all available open space will be eaten up by developers before parks can be established. The requirement does not relieve the city of the financial burden of providing the parks, however. Section 711.09 is the state authorization for the city action taken by Columbus chapter 3121. Section 711.09 goes on to provide that:

[N]o city or village planning commission shall adopt any rules or regulations requiring actual construction of streets or other improvements or facilities or assurance of such construction as a condition precedent to the approval of a plat of a subdivision *unless such requirements have first been adopted by the legislative authority of the city or village*. . . . (emphasis added.)

If a city desires, then, it can require subdividers to set aside and equip park land within their subdivisions.

Presently, Columbus has not enacted any requirement other than the one that subdividers file their plans with the city. Superintendent Freiheit indicates, however, that the city is considering shifting more of the burden to developers. He proposes that the City establish a new zoning ordinance for a conservation district. Whenever a developer plans a project that encroaches on the conservation district, then he must meet with officers of the Division of Parks and Forestry in order to attempt to set aside some land for open space use. In all probability, the city will seek to obtain an easement over a section of the tract in order to provide park area. Section 711.09 seems to authorize the city to go further and require development of the park by the subdivider. Another suggestion would have all developers set aside and dedicate park areas within their developments, whether in a conservation district or not.

Though formal procedures are still in the planning stages, Columbus has had considerable success with an analagous informal procedure.¹¹³ Three main rivers run through the city—the Scioto, Olentangy and Alum Creek. Some time ago, city planners decided to develop scenic trails and walkways along the length of the rivers. The plans are extensive, provid-

¹¹³ All information concerning this procedure was drawn from the Freiheit Interview, *supra* note 99.

ing, for example, for a trail along the Scioto which stretches from Frank Road in South Columbus to Southern Delaware County in the north. Such an ambitious program obviously entails massive land acquisition. The city owned some river frontage at the plan's inception and since has acquired more. Some riparian owners have freely granted easements to the city. The most interesting aspect of the acquisition program occurs when a riparian applies for a zoning variance in order to develop river front property which is not yet under city control. In such cases, the zoning commission sends the applicant to the Division of Parks and Forestry for some off-the-record negotiations. If the applicant grants the city an easement for its river trails, the application for a variance has a good chance for approval.

Though such a system may offend some, at least in its informal stage, no one can question its effectiveness. Also, the philosophy behind establishment of a formal procedure of this kind is sound. Columbus is a rapidly growing city and developers here have been particularly active in recent years. Even with an expanding tax base, the city simply does not have the resources to provide adequate open space. There is no philosophical evil in requiring those who profit most from the development to contribute open space for recreational facilities. The New York courts apparently see no constitutional evil; they approved such a system nearly forty years ago.¹¹⁴ The Blue Plan suggests, as an alternative to such a dedication program, that the developer make a cash payment which is earmarked by the city for park development in the area.¹¹⁵

4. Official Plan

This plan contemplates that the city undertake a comprehensive study of where new parks are needed.¹¹⁶ An official map or plat would then be established which would reserve the designated areas and would give the city a right to acquire the land within a six-year period. The advantages of this method are obvious. It curtails the "shotgun" approach of having to fit parks into available open space, which is not always in the most accessible areas. Potential developers would be put on notice by an overall plan that they could not develop certain open spaces for a six year period. Such a concept is not new.¹¹⁷ Cities have successfully used this device in street planning and several states have upheld its constitutionality. Streets, however, are only portions of tracts, the entirety of which would be needed for park mapping. At least one state, Penn-

¹¹⁴ *Matter of Lake Secor Development Co., Inc.* 141 Misc. 913, 252 N.Y. Supp. 809 (1931), *aff'd without opin.* 235 App. Div. 627, 255 N.Y. Supp. 853 (2d Dept. 1932).

¹¹⁵ BLUE PLAN, *supra* note 98, at 75.

¹¹⁶ Freiheit Interview, *supra* note 99. But see SIEGEL, THE LAW OF OPEN SPACE 14 (1960); BLUE PLAN, *supra* note 98, at 80.

¹¹⁷ For a general discussion of past use, see SIEGEL, THE LAW OF OPEN SPACE 14 (1960).

sylvania, has refused to accept this method. In *Miller v. City of Beaver Falls*,¹¹⁸ the Supreme Court of Pennsylvania struck down a city's three year restriction on land that was a potential park site. Whether or not the idea is constitutionally prohibited is, of course, a matter for judicial determination. But there can be no doubt about the recreational and development policy which underlies the plan. In a city with as much open space for potential development as Columbus, it would be tragic if industrial and residential developers could consume all available open space in the immediate metropolitan area. Allowing the city to place reasonable restrictions on development by an official map is a sound way to preserve some vital open space in areas that can be suburbanized with a view to enjoyment of the recreational advantages of the parks. As with subdivider's contributions, official park mapping is still in the talking stage in Columbus.

5. Flood Plains

More significant progress has been made in Columbus in the floodplain-floodway area than in either of the two programs mentioned above. Floodplains and floodways are those areas which, as their name implies, are inundated by water from time to time. A floodway is that area closest to the river or stream. Floodplains lie beyond the floodway and flood less often than the floodways.¹¹⁹ Since these areas are subject to frequent flooding, many cities are taking steps to limit the use which may be made of such property.

Columbus is now in the process of implementing a series of floodplain legislation. One segment has already been enacted—that which qualifies citizens of Columbus to receive the benefits of the National Flood Insurance Act. Another segment has been unanimously cleared by the development department. The city council, however, has not yet approved the proposed ordinance. The basic purpose of the proposed ordinance is to superimpose additional regulations on the zoning districts which now lie within floodplains and floodways. In order to establish these areas, maps will be developed by the U. S. Army Corp of Engineers designating both the floodplain and the floodway. Thereafter any use of the designated areas must be in conformity with the Flood Land Development Regulations which will be enacted by City Council. Primarily, floodways will be restricted to open space uses while floodplains may be utilized for both open space uses and certain non-residential buildings. As presently drafted, the ordinance provides, among other things, that the areas may be used for:

¹¹⁸ 368 Pa. 189, 82 A.2d 34 (1951).

¹¹⁹ For a more technical definition of floodways and floodzones, see proposed Columbus, Ohio Ordinance No. 961-71.

Open space uses such as, but not limited to, parks, nature trails, hiking trails, golf driving ranges, gardens, playgrounds, picnic grounds, tennis courts and archery ranges¹²⁰

Such a plan obviously has great potential for the development of urban parkland. This is especially true in Columbus, which is intersected by several streams. The plan should also greatly aid the present nature trail program discussed earlier. There is little doubt that such regulations are constitutional. Columbus has restricted the use of floodplain areas for several years,¹²¹ though admittedly not as extensively as the new regulations will allow. Moreover, it cannot be doubted that the city has a substantial interest in limiting residential development in a flood-prone area.

6. Excess Condemnation

A problem which has occurred all too often in some urban areas is the encroachment of undesirable uses upon reserved open areas. Nothing discourages the use of a park area more than the establishment of a glue factory along its borders. In her book, *The Death and Life of Great American Cities*, Jane Jacobs points out that the erection of high rise buildings alongside some parks has drastically affected their use.¹²² One method of protecting open areas is excess condemnation. This procedure is exactly what its name implies—appropriating more land than necessary for the project in order to control development of its borders.¹²³ After the land is brought under city control, it is then sold or leased subject to use restrictions. The land may even be sold back to its original inhabitants who can continue to use it for residential or agricultural purposes. Though some states balk at excess condemnation, the Ohio constitution expressly authorizes it.¹²⁴ In order to condemn more property than is actually needed, however, the municipality must specifically define its purpose for so doing and must also prove the necessity of the excess taking. Unfortunately, neither the city nor the metropolitan district makes much use of such a program.¹²⁵ Again, the reason is lack of sufficient money to acquire needed land, much less excess land. There is a similar program, however, which takes less money and which the metropolitan district has used effectively. This program consists of a public easement to prevent development.¹²⁶

¹²⁰ *Id.* at § 3345.07(b).

¹²¹ COLUMBUS, OHIO CODE § 3345 (1935).

¹²² JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 89-111 (1961).

¹²³ For a general discussion of this topic, see SIEGEL, *THE LAW OF OPEN SPACE* 11 (1960).

¹²⁴ OHIO CONST. art. 18, § 10 (1912).

¹²⁵ This was indicated by both Superintendent Freiheit and Deputy Director Metzger.

¹²⁶ See BLUE PLAN, *supra* note 98, at 75. See also SIEGEL, *THE LAW OF OPEN SPACE* at 29-32 (1960).

In the past, the metropolitan district successfully encouraged property owners to restrict the uses of property surrounding newly purchased park areas.¹²⁷ Since the property owner usually sold part of the area for the new park, a portion of the consideration for the transaction was considered to be the negative easement contained in the deed. The success of this program has fallen off in recent years, however, primarily due to skyrocketing property values. Deputy Director Metzger indicates that yesterday's notion of preserving one's land in its natural state has been supplanted by money wielding developers ready to buy undeveloped farmland at premium prices. Thus, while a negative easement program can be used, and has been used for years to control development around airports, the expense involved undermines the effectiveness of the program.

7. Deed Restrictions

A primary problem in Columbus, as well as in other areas, is the use of park land for other than park purposes. Thus, a park in south Columbus is presently serving as a sanitary land fill. Wolfe Park contains a police substation while another Columbus park hosts a fire stationhouse. The problem is obvious. Urban land is not only scarce and expensive for the park department but for all other city agencies as well. Therefore, when the fire department needs to expand it is much cheaper for city council to simply reallocate open space presently being used for parks. While such a system works wonders for the fire department budget, it is something less than an overwhelming success from the point of view of parks and recreation.

Superintendent Freiheit indicates that the Columbus park lands are publicly owned and, as such, can be invaded by city council for a superior public purpose.¹²⁸ One method of combatting the problem is placing restrictive covenants in deeds of conveyance to the city. Both Franklin Park and Goodale Park are under such use restrictions.¹²⁹ The deeds granting them to the city provide that if any use other than park use is made of the property, it shall revert to the grantor. Courts in general do uphold such restrictions, as can be easily seen from the recent case of *Evans v. Abney*¹³⁰ where the Supreme Court held that a park restricted to white use reverted to the grantor when Negroes were allowed to use it. The only problem with such restrictive covenants, other than inclusion in the deed to begin with, is insuring that the heirs of the grantor will enforce the restrictions. Obviously the heirs of Senator Augustus O. Bacon

¹²⁷ Metzger Interview, *supra* note 91.

¹²⁸ See also, SIEGEL, *THE LAW OF OPEN SPACE* at 21-25 (1960). Also in point is a recent feature article in the *Wall Street Journal*, Feb. 25, 1971, at 1, col. 4.

¹²⁹ Freiheit Interview, *supra* note 99.

¹³⁰ 396 U.S. 435 (1970).

were horrified at the thought of Negroes actually using the Macon, Georgia, park. A future Columbus resident may not feel so strongly about a fire station in Goodale Park. Moreover, any park administrator who publicly encourages enforcement of such restrictions by the grantor will undoubtedly do so only once. These problems aside, however, deed restrictions are being encouraged by park administrators in order to protect what space they have.¹³¹

8. Miscellaneous Provisions

Several other methods of acquiring and preserving land have been submitted by various groups. One such method is to develop a conservation district, similar to the one discussed earlier, and require that before open space land in the district can be sold, the city must be granted the first right of purchase.¹³² Other suggestions include taking title to certain lands, but granting a life estate to its original owner. This has the advantage of reserving land which does not need immediate development, thus decreasing the likelihood of losing the land to another city agency if early development is too expensive. The disadvantage, of course, is that there is no certainty when the land will become available. Other deferred uses are purchase and leaseback, as discussed earlier in connection with excess condemnation, and various forms of affirmative easements which grant the right of use on private land.

D. *Using the Parks*

Though many of the problems concerning park usage may be alleviated by increasing acreage and development, expansion alone is not the only solution. The crime problem, for example, in inner city parks will not disappear simply by increasing the number of parks. Some suggest that the problem may be multiplied through expansion by simply giving criminals and degenerates more room to operate.¹³³ Crime control in the Columbus area parks is not presently a major problem, however. Whatever the problems in New York, Chicago and Philadelphia, both Superintendent Freiheit and Deputy Director Metzger indicated that their respective park systems are relatively free from danger to users. That, of course, is no comfort to park administrators elsewhere and is certainly no guarantee that Columbus will never have such a problem. Some of the suggestions to head off such undesirable elements in parks will be discussed in the last section of this comment.

¹³¹ Mr. Freiheit strongly advocates placing restrictions in city acquired park property.

¹³² BLUE PLAN, *supra* note 98 at 74.

¹³³ See JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 89-111 (1961).

1. Present Park Programs

As noted earlier, the Columbus Metropolitan Park District is primarily a conservation agency. Much of the land held in the Columbus system is wooded, and forestation programs are being planned for other parks. Cutting through the park woods are nature trails which, though extensive, do not destroy the naturalness of the area. The forests themselves are not the formal woods favored by some. Instead, they appear to be left relatively free to develop in a natural state. This, of course, serves a dual purpose of conservation. It allows the woods to develop naturally and discourages all but adventurous souls from wandering off the trails.¹³⁴ The metropolitan parks also furnish picnic facilities, but not in the woods themselves. Though some play equipment (swings, etc.) is furnished for small children, the parks have little in the way of organized recreation.¹³⁵ For example, the parks have adequate open area for ball games, but there are no baseball diamonds or basketball courts. The thrust of park use seems intended primarily for relaxation and enjoyment of natural areas located within one-half hour of the urban center. Use of the metropolitan parks is fairly concentrated. Most users are confined to from 15 percent to 30 percent of the park area, the theory apparently being that allowing extensive utilization would destroy the natural area concept.¹³⁶

In contrast to this system are the Columbus parks. The city parks are designed primarily for extensive use.¹³⁷ Existing parks offer little in the way of natural areas, though the proposed Three Rivers Park in Southeast Columbus will be heavily wooded. Most Columbus parks offer recreational facilities, ball diamonds, picnic grounds, ice skating and other activities depending, of course, on the size of the park. Most of the recreational facilities are maintained by the Department of Recreation. This Department, under the directorship of Mel Dodge and a policy making board of commissioners, is a separate entity entirely from the Division of Parks and Forestry. Obviously, however, the two departments work together closely, with the city's recreation centers being located within the city parks. Also within the domain of the recreation department are the city's golf courses and swimming pools.¹³⁸ Although no figures are available, it appears that there is much less concentration of use in the city parks than the metropolitan parks.

The differing philosophies of the two park systems are easily reconcilable. Though there is much merit to the preservation versus utilization argument for rural parks, the same philosophy simply does not apply

¹³⁴ Deputy Director Metzger indicated that the trails are patrolled but he feels the undergrowth discourages most people from leaving the paths.

¹³⁵ See Progress Report, *supra* note 101, at "Nature of Public Use."

¹³⁶ Metzger Interview, *supra* note 91.

¹³⁷ Freiheit Interview, *supra* note 99.

¹³⁸ Recreational programs are discussed generally in BLUE PLAN, *supra* note 98, at 48-56.

in urban areas. City parks are for people; they are to be used and enjoyed by those confined to an environment otherwise consisting of bricks and glass. Presently, the dual structure of parks in Columbus offers attractive alternatives to the city's inhabitants. The multiple use recreation areas provided by the city provide an opportunity to exercise, relax and generally unwind from the bustle of city life. While rural children have seemingly endless fields in which to roam and play, a city child's only refuge often is his neighborhood or community park.

For those with a more rustic outlook, the municipal parks offer a pleasant alternative. The average round trip from Columbus to a state park is 110 miles. Fortunately, the metropolitan parks offer much the same thing closer to home. While still permitting substantial use, the parks provide a more natural area for the enjoyment of their users. At the same time, of course, valuable wooded areas are preserved. The metropolitan parks also provide educational opportunities. Each year, for example, every fifth grade student in Columbus spends a day in the Nature Center at Blacklick Woods Park.¹³⁹ For many inner-city children, this may be their first look at a forest preserve. And this, unfortunately, is one of the few shortcomings of a metropolitan park district. For many suburbanites, metropolitan parks are a short drive or even an enjoyable walk away. For nearly every family in Columbus the parks are only a half hour's drive away. But for the inner-city family with no means of transportation, the parks might just as well be in another part of the state. Natural areas, of course, are not created overnight. There are none in central Columbus and no plans to develop any. In order to enjoy a rustic park, the people must be able to go to it. Deputy Director Metzger indicates that, while a user survey has never been made, he feels the poorest use record for the metropolitan parks is from the inner-city. This is perhaps best reflected by comparing the 1970 election results in the local district's 0.3 mill renewal levy. While the results were quite good in suburban areas, Metzger indicated that Hilltop and East Columbus returns were "terrible." Admittedly, this may simply indicate that the poor areas of the city are just less inclined to vote for tax levies. However, given the fact that most innercity families use the parks only in church picnics or other transportation-provided uses, it may also indicate that the inner-city residents simply do not wish to support parks they cannot use.

The solution to this problem is not an easy one. Given its present financial position, the District itself is unable to provide the transportation necessary to make its parks more accessible.¹⁴⁰ It is also doubtful that traffic volume would be heavy enough to support private bus service to the area. Even if transportation were available, there is the additional

¹³⁹ Also, nature classes are conducted in the Metropolitan Parks.

¹⁴⁰ In fact, Deputy Director Metzger indicated that the District can do little to attract such citizens to the park.

problem of providing enough space for the increased use. Metzger estimates that over 400,000 people, primarily families, use Blacklick Woods Park alone each year. Several times on Sundays and holidays park patrolmen have closed the gates and encouraged people not to enter the park.¹⁴¹ It makes little sense to transport people to an area that simply cannot accommodate them. Deputy Director Metzger feels that the city must fill this gap. However, the city can support only part of the burden. As noted previously, there are no natural wooded areas in the city. While the city system can provide playgrounds and open fields, it obviously cannot create a forest, at least not for some time. For the present, it appears that inner-city residents will have to be content with park development in their own areas. As the metropolitan parks expand, however, perhaps more activities for less fortunate citizens will be sponsored. Increasing day camp activities during the summer months would be a good beginning. The District might also choose certain days during the summer when, in cooperation with local transportation companies, the inner-city residents could be transported to and from the parks. Regardless of the fact that some expense is involved, the parks are for *all* the people. Also, it may be true that residents of poverty areas need the parks more than anyone else.

E. *Park Development*

As noted above, many existing problems could be solved if more park space were available. Fortunately, both park systems in this area plan substantial development during the next ten years. As previously discussed, the funds from the district park levy which was just passed will be used for development. The vigorous acquisition program of the metropolitan district is over, at least for the time being. However, development of the 3100 unused acres will more than double the district park area presently in use. In addition, some selective acquisition is still being pursued.¹⁴²

Columbus, on the other hand, will continue to both acquire and develop park property. Presently at least three large area parks are in the planning stage.¹⁴³ Two of the parks, one near Hoover Reservoir in the Northeast and one in the Three Rivers area in the Southeast, will combine recreational facilities and natural wooded areas. The third facility is a large recreational type area park along the proposed Olentangy Parkway in Northwest Columbus.

The city also plans extensive development in the inner-city. As previ-

¹⁴¹ Like most park administrators, Metzger is doubtful about the legality of excluding people from the parks. Therefore, the park is not really closed when the gate is closed.

¹⁴² But Metzger indicates *supra* that the main thrust of the program will concern development.

¹⁴³ Freiheit Interview, *supra* note 99.

ously noted, there is more park land in the inner-city—model-cities area than in any other area of Columbus. However, much of the land is not particularly accessible. Both Franklin Park and Wolfe Park are classified as inner-city parks. However, both of these parks border the suburb of Bexley, which is not noted for its poverty-stricken citizens. Superintendent Freiheit admits that these parks are really not accessible to some inner-city residents. In order to alleviate this problem, foremost in inner-city park development are neighborhood parks, including mini-parks or vestpocket parks.¹⁴⁴ Moreover, the suburban areas must not be forgotten. The only effective way to provide adequate park service for these areas is to keep pace with the residential developments. Otherwise, the open space will disappear before park facilities can be installed.

Most of the specific development plans for this area are not discussed in this comment. The principal development plan for the Columbus area is the so-called Blue Plan. Even under cursory examination this plan is impressive in its proposals for the Columbus area. There are, however, some development problems which this comment can reach. One such problem is park financing. Most money for park expansion and development comes from the capital improvements budget. Superintendent Freiheit indicated that in the May 1972 election the voters will be asked to approve a \$40,000,000.00 expenditure. This money, of course, has already been collected. Approval of the planned expenditure is all that is now required.

However there are other financial problems that stand in the way of park development. As discussed in the state parks section of this comment, the state parks operate on a rotary fund. The Columbus system has a very limited rotary fund which includes only receipts from sales of boat gas and refreshments. Superintendent Freiheit has expressed a desire to develop boating rentals on city land in the university district, and to establish horseback riding in several other parks. He is presently unwilling to do so, however, since any revenue derived from these activities must go directly to the city's general fund. Theoretically all the money is returned to the parks, but Freiheit thinks that this is *only* a theory, at best. He states that if he could be assured of receiving these revenues through an expanded rotary fund, he would be more willing to proceed with park development. He also indicates that much of the successful expansion program of the recreation department is due to their revolving fund.

Another problem which Freiheit says he must face is appeasing interest groups who demand increased park programs in their areas. He cites the Mifflin area as an example. Freiheit asserts that this particular area has more park space than comparable areas, and that on a density basis it

¹⁴⁴ See BLUE PLAN, *supra* note 98, at 67-8.

has more than it should have. During the last few years, many inner-city residents who were displaced by urban renewal programs have relocated in Mifflin. As a result the area is now predominantly inhabited by blacks. Recently there has been much agitation for increased park land in the area. Freiheit explains that such requests were seldom received before the large influx of black residents. However, he does not believe that the blacks use Mifflin's parks more than the white citizens who formerly resided there. In his words, "They're just more vocal." Regardless of the reason for the requests, a very real problem is created for the park administrators. Obviously, with funds in short supply, one area cannot be overloaded with parks while others go begging. Apparently, present policy is to either ignore the requests or to talk around them. Whether this is successful remains to be seen.

Another problem which park administrators often face is assuring that parks will be used. If not, the area must be redesigned to encourage use. Also, unused parks often become dwelling places for degenerates, petty criminals and other undesirables. Presently, this does not present a major problem in Columbus. Adequate planning can do much to insure that it never becomes a problem. In *The Death and Life of Great American Cities*, Jane Jacobs deals with the problem of park disuse and misuse.¹⁴⁵ Her primary proposal is to bring activity, which she calls "demand goods," to the parks. In many metropolitan areas the concept of a generalized park seems to have taken hold. Franklin Park, which borders the inner-city in east Columbus, is a good example. While there is ample open space in the park, aside from some play equipment and some ball diamonds the park offers little specialized activity. Miss Jacobs recognizes the value of generalized parks; however, she asserts that adding such specialized activities as swimming, music, recreation centers and even a little summer theater can revive neighborhood interest in the parks. Not only can more people profit from the relaxation the park provides but, perhaps most important, the people (especially young people) are given something *to do*. At the same time, making the parks busy activity centers can discourage their use by degenerates and petty thieves who usually ply their trades in less active areas. Jacobs' proposal may, of course, send chills down the collective spines of conservation groups. Encouraging hundreds of people to utilize an area often does little to enhance its natural beauty.¹⁴⁶ But, as asserted earlier, urban parks are for people. Though no one can question the wisdom of conserving our rapidly disappearing open areas, neither can anyone deny the boiling condition of our inner-cities. Perhaps channeling energy (and frustration) into organized recreational programs in our urban parks will help to cool the

¹⁴⁵ JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 89-111 (1961).

¹⁴⁶ This, of course, is the primary reason the Metropolitan Park District concentrates use of its parks.

temperature of the ghetto. Or, as expressed by Edward Higbee, "If government fails to promote the best environment for its own people to the full extent of their needs, then the people may give in to their aggressive animal instincts, letting them develop into socially destructive behavior."¹⁴⁷

VII. CONCLUSION

Adequate planning, efficient administration and favorable geographical borders have combined to give the Columbus area an enviable park system. Unlike many communities, Columbus' inner-city residents have some breathing space. And, even more impressive, steps are being taken to conserve suburban open area before it is too late. To be sure, the system is not without its faults, and much work certainly remains to be done. What is important, however, is that plans are being laid to do the work. Implementation of the "Blue Plan," for example, could well make Columbus a model city in parks and recreation. Both local departments have indicated a willingness to work toward that goal. If their aggressive past record is continued into the future the goal may well become a reality.

Terry A. Bethel

Susan Brown

Gene R. Hoellrich

¹⁴⁷ SEYMOUR, SMALL URBAN SPACES 198 (1969).